UNITED
NATIONS

LOS

UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

Distr.
GENERAL

LOS/PCN/L.110/Rev.1
27 October 1993

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY
AND FOR THE INTERNATIONAL TRIBUNAL
FOR THE LAW OF THE SEA
Kingston, 22 March-2 April 1993

STATEMENT TO THE PLENARY BY THE CHAIRMAN OF SPECIAL COMMISSION 2 ON THE PROGRESS OF WORK IN THAT COMMISSION

1. Special Commission 2 held four meetings at the eleventh session. At the end of the tenth resumed session in New York, the Special Commission had established a programme of work for its current session. That programme of work, contained in paragraph 10 of document LOS/PCN/L.105, "Statement to the Plenary by the Chairman of Special Commission 2 on the progress of work in that Commission", consisted of reviewing its draft provisional final report.

2. At the 140th meeting of the Special Commission, the Chairman of the Commission recalled the Special Commission's decision to review its draft provisional final report as contained in document LOS/PCN/SCN.2/1992/CRP.6 at the current session. The Chairman of the Commission stated the importance he attached to the draft provisional final report reflecting as accurately as possible the discussions that had taken place in the Commission over the years. He noted that in the absence of summary records of the meetings of the Special Commission, the statement to the Plenary by the Chairman of the Commission at the end of each session over the years had reflected as accurately as possible what had transpired in the work of the Commission. While informing the Commission that it had been scheduled to hold five meetings at the current session, he pointed out that since the Chairman of the Preparatory Commission had requested that the Statements to the Plenary on the progress of work in the various Special Commissions by their respective Chairmen be submitted by Wednesday, 31 March 1993, the Special Commission really only had four substantive meetings to conclude its consideration of LOS/PCN/SCN.2/1992/CRP.6, "Draft Provisional Final Report of Special Commission 2".

3. He stated the procedure outlined by the Chairman of the Preparatory Commission to facilitate consideration of the draft provisional final report in each of the Commissions to enable them to conclude their work at the current

session. He pointed out that while the procedure did not allow for the renegotiation of issues that had been considered in the course of the Special Commission's work, it allowed delegations to comment on the draft provisional final report with regard to its accuracy and its reflection of the various points of view that had been expressed on those issues. He further pointed out that in the procedure outlined by the Chairman of the Preparatory Commission, proposed amendments to LOS/PCN/SCN.2/1992/CRP.6 could only be reflected in that report if the proposed amendments were agreeable to all of the members of the Special Commission. Comments or proposed amendments that were not agreeable to all of the members of the Special Commission would be included in his statement to the Plenary on the progress of work in Special Commission 2 at this, the eleventh session.

4. The view was expressed that a minority position of a group of delegations, a position that did not enjoy consensus, would, under this procedure, not be reflected and that the Chairman of the Commission should still take into account such minority positions. The Chairman of Special Commission 2 stated that all views would be reflected in the final report in a balanced way, even the views of an important minority group, whether or not those views were shared by all members.

5. The Chairman of the Commission began the discussions on LOS/PCN/SCN.2/1992/CRP.6 by inviting general comments on the document, followed by specific comments and/or proposed amendments on a section-by-section, chapter-by-chapter or issue-by-issue basis.

A. General comments on LOS/PCN/SCN.2/1992/CRP.6

6. Available to all members of the Commission were documents LOS/PCN/SCN.2/1993/CRP.7 of 28 January 1993, "Comments submitted by the European Community and its member States on the draft provisional final report of Special Commission 2 (LOS/PCN/SCN.2/1992/CRP.6)"; and LOS/PCN/SCN.2/1993/CRP.8 of 28 January 1993, "Suggested amendments to the draft provisional final report of Special Commission 2 (LOS/PCN/SCN.2/1992/CRP.6)", submitted by the delegations of Belgium, Germany, Italy, Japan, the Netherlands and the United Kingdom of Great Britain and Northern Ireland.

7. In his statement to the Special Commission in response to a question raised by the Coordinator of the Contact Group of the Group of 77 regarding the serious reservations that the European Community and its member States had with respect to the draft final report of Special Commission 2 (LOS/PCN/SCN.2/1992/CRP.6) as contained in LOS/PCN/SCN.2/1993/CRP.7, the representative of the European Community read out the following statement:

> "The European Community and its member States had stated in their paper (CRP.7) that the provisional final report of Special Commission does not reflect the state of discussions in that Commission. Further, they consider that the report is not sufficiently balanced. This can be illustrated with the following examples:

- The report does not reflect adequately the state of discussions on the transitional arrangements for the Enterprise;

- In effect it does not contain with sufficient detail the observations made by several delegations on the necessity to foresee a pre-operational period and, as a result, to provide for institutional arrangements for this period;

- It does not contain the recommendation agreed to in Kingston in 1992 on the initial institutional arrangements. This recommendation appears only in the annotation reproduced in CRP.5/Rev.1, pages 9 and 10;

- The report does not reflect the opinion of several delegations on the question of the structure and organization of the Enterprise after the initial phase and it does not contain the observation that the Enterprise should operate on purely commercial terms."

8. With regard to document LOS/PCN/SCN.2/1993/CRP.8 which contained suggested amendments to the draft provisional final report of Special Commission 2 (LOS/PCN/SCN.2/1992/CRP.6), the Coordinator of the Group of 6 in Special Commission 2 stated that the suggested amendments came from the Group of 6 since it was that Group and not the European Community and its member States that more closely followed the work of Special Commission 2. He pointed out that in the group's view, LOS/PCN/SCN.2/1992/CRP.6 was a bit short in its presentation of the various issues that had arisen in the consideration of its mandate. He pointed out that while the group was not stating that the contents of the report were not factual, other things had happened that if properly reflected in the report would more fully reflect the position of the Group of 6. As an example, he stated the group's support for an evolutionary approach to the Enterprise wherein at the beginning, the Enterprise is part of the Authority, a small office which works under the protection of the Authority and is part of the Authority, expanding as prospects for seabed mining improve. The Group of 6 was of the view that LOS/PCN/SCN.2/1992/CRP.6 did not reflect the kind of agreement reached in this regard, but seemed to imply agreement on the organization or institutional arrangement of the Enterprise. LOS/PCN/SCN.2/1993/CRP.8 contained suggested amendments to the text of LOS/PCN/SCN.2/1992/CRP.6 to take better account of the position of the Group of 6.

9. The view was expressed that LOS/PCN/SCN.2/1992/CRP.6 was clearly structured in the form in which it was required to be presented to the Commission as provided for in paragraph 3 of LOS/PCN/L.105 of 19 August 1992, "Statement to the Plenary by the Chairman of Special Commission 2 on the progress of work in that Commission". Another view was that the report being considered (LOS/PCN/SCN.2/1992/CRP.6) accurately reflected the discussions in the Commission.

10. A further view expressed by the Coordinator of the Contact Group of the Group of 77 for Special Commission 2 matters was that the group found the report to be accurate, clear to read and "user-friendly". On the subject of the serious reservations expressed by the European Community and its member States to LOS/PCN/SCN.2/1992/CRP.6 and the points of view expressed in this regard, in

particular whether or not any agreements had been reached in the Special Commission, he posed the question whether it was not fair to say that an accomplishment of Special Commission 2, led by its Chairman (Mr. Lennox Ballah; of Trinidad and Tobago) was the organization of the Training Panel. He also stated that LOS/PCN/SCN.2/1992/CRP.6 had structured itself in such a way that someone just joining the deliberations of Special Commission 2 could determine where the Commission had begun its work and where the Commission was in relation to its work at the current stage. He further went on to state that LOS/PCN/SCN.2/1992/CRP.6 accurately reflected what had transpired in the Commission, and as an aid to the reader, went into great depth in its annexes and through the annotations to point out where there had been some movement in negotiating positions. It was the group's point of view that the position of the Group of 6 was more than adequately reflected in the report.

11. A member of the Group of 6, reacting to the characterization of LOS/PCN/SCN.2/1992/CRP.6 as "user-friendly", expressed the view that the Group of 6 did not completely share that judgement. He stated that the suggested amendments contained in LOS/PCN/SCN.2/1993/CRP.8 were part of the effort of the Group of 6 to achieve that aim. He pointed out that the main part of the report could be found in pages 1 to 15 of LOS/PCN/SCN.2/1992/CRP.6 and that to fulfil the requirement of user-friendliness, the major negotiating positions of the different participants which were embodied in the annexes but not reflected in the main part should be moved to that part. To illustrate his point, he undertook a comparison of the suggested amendments contained in LOS/PCN/SCN.2/1993/CRP.8 and the provisions contained in the draft provisional final report (LOS/PCN/SCN.2/1992/CRP.6). He was able to demonstrate that most of the wording contained in the suggested amendments came from annexes 2 and 4 to LOS/PCN/SCN.2/1992/CRP.6, and paragraphs 20 to 22 of the same document.

12. Following further discussions on whether or not consideration of the suggested amendments proposed by the Group of 6 constituted a new approach to the work of the Commission, the Chairman of the Special Commission suggested that the Coordinators of the two major interest groups represented in the Commission, namely the Group of 77 and the Group of 6, hold consultations to find language around which consensus could be reached. In the end, it was decided that the Chairman of the Commission, who had full command of all of the information on the work of the Commission and who was best placed to ascertain the positions of the various interest groups, should propose a text based on LOS/PCN/SCN.2/1993/CRP.8 for the consideration of the Commission.

B. Comments specific to the various sections of LOS/PCN/SCN.2/1992/CRP.6

13. Sections I and II of LOS/PCN/SCN.2/1992/CRP.6, entitled "Mandate of the Special Commission" and "Programme of work" respectively, were acceptable to all members of the Special Commission.

A proposal was made by the delegation of the Russian Federation to include the following paragraph at the end of section II:

"The Commission notes that no provision in this report, just as the absence of objections to the provisions in this report, should be construed as prejudging the positions of the countries, which may be defined subject to possible agreement reached on the outstanding issues defined by the States which are currently under discussion in the consultations in order to give universal character to the United Nations Convention on the Law of the Sea."

Not all delegations found the proposal acceptable. As a result, the proposal was not reflected in LOS/PCN/SCN.2/1992/CRP.6.

14. In section III.1(a), entitled "Development of a training scheme", the view was expressed by the delegate of China that the elaboration of a training scheme by the working group from the Special Commission which had commenced its work at the fifth session in 1987 was one of the most important achievements of the Commission. He pointed out that, despite the difficulties faced by the working group, its unrelenting efforts had resulted in the Principles, policies, guidelines and procedures for the Preparatory Commission training programme which later became the document for the implementation of training. For that reason, he suggested that a list of the members of the Ad Hoc Working Group on Training be added to paragraph 11 of LOS/PCN/SCN.2/1992/CRP.6 in keeping with the language used to list the members of the Chairman's Advisory Group on Assumptions, as contained in paragraph 1 of annex 5 to LOS/PCN/SCN.2/1992/CRP.6.

15. All members of the Commission found the proposal acceptable and therefore between the first and second sentences of paragraph 11 of LOS/PCN/SCN.2/1992/CRP.6, the following language will be introduced into the report:

"Conscious of the need to reflect all interests and views, it was agreed that the Ad Hoc Working Group on Training would include the four pioneer investors (USSR, France, Japan and India), Canada, Italy, China, Kenya, Tunisia, Bangladesh, Malta, Colombia, Jamaica, provisionally Denmark, the Council for Namibia and a representative from the International Ocean Institute." 1/

16. The only other comment on section III was in relation to paragraph 14. It was suggested that the information in this section be updated to take into account the results of the current meeting of the Training Panel.

17. With regard to section III.2, 3 and 4, the Group of 6 in LOS/PCN/SCN.2/1993/CRP.8 had suggested the deletion of paragraphs 20 to 22 and 39, and proposed nine paragraphs elaborating the discussions by the Commission on (a) transnational arrangements for the Enterprise and (b) annotations on the provisions of the Convention relating to the structure and organization of the Enterprise.

18. Based on the request of the Special Commission that the Chairman propose language that captured the sentiment and position of the Group of 6 as provided for in LOS/PCN/SCN.2/1993/CRP.8, the Chairman proposed an alternative formulation, which is contained in LOS/PCN/SCN.2/1993/CRP.9 of 25 March 1993. Following consultations by the Group of 6 and the Group of 77, with the

exception of paragraph 23 suggested in that document, the suggested amendments in LOS/PCN/SCN.2/1993/CRP.9 were acceptable to all members of the Commission. A new text was suggested to replace paragraph 23, as follows:

> "In a statement on document LOS/PCN/SCN.2/L.8, the Group of 6 pointed out that since the Third United Nations Conference on the Law of the Sea many important changes had occurred and that changing circumstances may affect the provisions of the Convention relating to the Enterprise. Consequently, the Group thought it was inappropriate at this moment to annotate provisions which one did not know whether and under what circumstances they would be applied."

All the members of the Special Commission found the suggested amendment acceptable and so the above wording will be the new language for paragraph 23 of LOS/PCN/SCN.2/1992/CRP.6.

19. A number of specific comments were made in relation to section IV of LOS/PCN/SCN.2/1992/CRP.6. As regards the title of the section "Recommendations of the Special Commission", the view was expressed that no recommendations were made and its title was therefore misleading. It was proposed that the title of the section be changed to "Annexes". All members of the Special Commission found the proposal acceptable.

20. With regard to annex 1, "The Preparatory Commission Training Programme" no specific comments or amendments were proposed. All members of the Special Commission found its contents acceptable.

21. A number of specific comments and amendments were proposed for annex 2 to the report, entitled "Recommendations regarding the organizational structure of the Enterprise". It was suggested that the words "Recommendations regarding" in the title be deleted. It was also suggested that the title of the document reproduced in the annex to document LOS/PCN/SCN.2/L.8/Rev.1, "Recommended annotations by Special Commission 2 on the provisions of the Convention relating to the structure and organization of the Enterprise", should be changed to read "Annotations made in Special Commission 2 on the provisions of the Convention relating to the structure and organization of the Enterprise". All members of the Special Commission found both proposals acceptable. The new title of annex 2 is therefore "The organizational structure of the Enterprise" and the new title for LOS/PCN/SCN.2/L.8/Rev.1 is "Annotations made in Special Commission 2 on the provisions of the Convention relating to the structure and organization of the Enterprise".

22. With regard to the introduction to annex 2, a number of proposals were made that were acceptable to all members of the Commission, as follows:

Paragraph 1

The first sentence of the paragraph is amended as follows: "The present paper contains the annotations made in Special Commission 2 on the structure and organization of the Enterprise".

Paragraph 2

The last sentence, which reads "Those recommendations have been finalized and are contained in document LOS/PCN/SCN.2/1992/CRP.5/Rev.1", is amended and will now read "These questions are dealt with in document LOS/PCN/SCN.2/1992/CRP.5/Rev.1".

Paragraph 3

In the first sentence of this paragraph, the word "agreed" in the second line should be changed to "felt".

Paragraph 5

In the first sentence, the word "general" should be deleted.

Paragraph 6

The last sentence of the paragraph, which reads "The Special Commission also decided to incorporate the statement which was made by the Group of 6 at the tenth session, explaining why they wished to reserve their position on document L.8", should be deleted.

23. In respect of annex 3, "The joint venture option for the Enterprise", it was suggested that the title of document LOS/PCN/SCN.2/WP.18/Rev.1 should be amended to read as follows:

"Draft basic Joint Venture Contract with annotations made in Special Commission 2".

All members of the Commission found the proposal acceptable and so the new title of LOS/PCN/SCN.2/WP.18/Rev.1 is as above.

24. Similar proposals were made in respect of annex 4 to the document. All members of the Commission found these proposals acceptable. The new title of annex 4 is therefore "The initial operations and administration of the Enterprise", and the new title of document LOS/PCN/SCN.2/1992/CRP.5/Rev.1 is "Annotations made in Special Commission 2 on the suggestions of the Chairman of the Special Commission to facilitate discussions on transitional arrangements for the Enterprise".

25. Finally, in the introduction to the above document, in the first sentence, it was proposed that the word "recommendations" be deleted and the word "annotations" substituted for it. All members of the Special Commission found the proposal acceptable. As a result the first sentence of the introduction to LOS/PCN/SCN.2/1992/CRP.5/Rev.1 will read: "The present paper contains the annotations of Special Commission 2 to the Plenary of the Preparatory Commission on transitional measures that need to be taken to ensure that during the period between the time of entry into force of the Convention and the time when the viability of seabed mining is established (pre-operational period), there is no hiatus in the evolution of the Enterprise as an institution."

26. The titles of the individual annexes as presented on page 2 of LOS/PCN/SCN.2/1992/CRP.6 are to be modified accordingly.

Closing remarks

27. The Chairman of the Special Commission thanks all members of the Commission for their cooperation and assistance over the years of our deliberations. Special thanks and appreciation go to Baïdy Diène of Senegal who was the Coordinator of the Ad Hoc Working Group on Training and who is now the Chairman of the Training Panel. The Chairman also expresses his gratitude to the Chairman's Advisory Group on Assumptions and to its Coordinator, Mr. Luis Preval of Cuba. It is our hope that the work of that Group will continue until the Convention comes into force and effect. The Chairman wishes further to put on record his deep thanks for the valuable work done by both Miss Gwenda Matthews and Mr. Nii Allotey Odunton, Secretaries to the Special Commission, and also Miss Gabriele Göttsche. Finally, our thanks go to all members of staff that have serviced the Special Commission beyond the call of duty.

Notes

1/ Para. 5 of document LOS/PCN/L.45 of 14 April 1987.